

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

VOLKSWAGEN  
AKTIENGESELLSCHAFT, et al.,

Defendants.

Case No. [19-cv-01391-CRB](#) (JSC)

**ORDER RE: PLAINTIFF'S MOTION  
TO COMPEL DEFENDANTS TO  
SUPPLEMENT INTERROGATORY  
ANSWERS**

Re: Dkt. No. 77

Pending before the Court is a discovery dispute joint letter regarding Plaintiff's demand that Defendants supplement answers to interrogatories. (Dkt. No. 77.) After carefully considering the parties' joint submission, the Court concludes that oral argument is not necessary. *See* N.D. Cal. Civ. L.R. 7-1(b).

Plaintiff contends certain statements in the Bond Offering Memoranda and responses to the Due Diligence Questionnaires were false and misleading. It served a second set of interrogatories asking Defendants to identify the persons who "drafted, reviewed, approved or furnished" information for the challenged statements. Defendants responded by identifying two or three persons who were "responsible" for the sections and responses and, pursuant to Federal Rule of Civil Procedure 33(d), referring Plaintiff to certain documents by bates number. Plaintiff claims these responses are inadequate. The Court agrees.

First, stating that a person was "responsible" for a section or response does not disclose whether that person drafted, reviewed, approved or furnished information for the section or response. Defendants instead must answer under oath that the identified person "drafted, reviewed, approved or furnished information" for the section or response, assuming such fact is

1 true. *See* Fed. R. Civ. P. 33(b)(5). Such “requirement is critical because interrogatories serve not  
2 only as a discovery device but as a means of producing admissible evidence; there is no better  
3 example of an admission of a party opponent, which is admissible because it is not hearsay, than  
4 an answer to an interrogatory.” *Spence v. Kaur*, 2020 WL 7406294, at \*9 (E.D. Cal. Dec. 17,  
5 2020) (cleaned up).

6 Second, Defendants’ reliance on Rule 33(d) is insufficient. The identified documents do  
7 not necessarily answer which persons, if any, VW contends “drafted, reviewed, approved or  
8 furnished information” for the section or response. It is not self-evident from the identified  
9 documents which persons engaged in such conduct. For example, Gunnar Krause is copied on  
10 certain identified emails, the direct recipient of certain identified emails, and the drafter of certain  
11 identified emails. (Dkt. No. 77-3 at 28, 29, 61.) Yet, Defendants assert elsewhere that Mr. Krause  
12 was not connected to any of the statements. (Dkt. No. 77-6 at 2 n.1.) This disconnect  
13 demonstrates that the identified documents are subject to interpretation, and Plaintiff is entitled to  
14 know how Defendants interpret whether a person mentioned in the documents “drafted, reviewed,  
15 approved or furnished” information in the section or response. In other words, the identified  
16 documents do not necessarily determine the answer to the interrogatories, and the burden of  
17 deriving the answers is not the same for Plaintiff and Defendants because Plaintiff does not know  
18 the context or background or how Defendants interpret the documents. *See* Fed. R. Civ. P. 33(d).

19 Third, Defendants’ responses are inadequate as they do not state whether they are aware of  
20 other people who “drafted, reviewed, approved or furnished information” for the section or  
21 response but are not mentioned in the identified documents. “Each interrogatory must, to the  
22 extent it is not objected to, be answered separately and fully in writing under oath.” Fed. R. Civ. P.  
23 33(b)(3). Defendants have not fully answered the interrogatories.

24 That much time has passed since the challenged statements were made does not excuse  
25 Defendants from answering the interrogatories. Defendants must fully answer the interrogatories  
26 under oath to the best of their ability.

27 Defendants shall supplement their responses to Plaintiff’s Second Set of Interrogatories  
28 consistent with this Order by February 10, 2022.

This Order disposes of Docket No. 77.

**IT IS SO ORDERED.**

Dated: January 11, 2022

  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge

United States District Court  
Northern District of California